

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 28341 of 2003(Y)

PETITIONER:

**ABDUL ALI, S/O.MOHAMMED ALI,
KANJIRALA HOUSE, AREEKODE AMSOM DESOM,
MALAPPURAM DISTRICT.**

**BY ADV. SRI.M.C.SEN (SR.)
SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY
SECRETARY, FOREST WILD LIFE DEPARTMENT,
TRIVANDRUM.**
- 2. CHIEF FOREST CONSERVATOR, TRIVANDRUM.**
- 3. DIVISIONAL FOREST OFFICER, TIMBER
SALES DIVISION, PALAKKAD.**
- 4. DEPOT RANGE OFFICER, FOREST CENTRAL
DEPOT, ARUVAKKOD, NILAMBOOR.**

BY GOVERNMENT PLEADER SMT.M.LALITHA NAIR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1** **TRUE COPY OF GAZETTE NOTIFICATION DTD. 25-11-97.**
- EXT.P2** **TRUE COPY OF BILL ISSUED BY THE FOURTH RESPONDENT TO THE PETITIONER DTD. 16-8-98**
- EXT.P3** **TRUE COPY OF LETTER DATED 4-1-99 OF THE FIRST RESPONDENT.**
- EXT.P4** **TRUE COPY OF LETTER DTD. 26-2-99 DO.**
- EXT.P5** **TRUE COPY OF LETTER DTD. 9-6-03 BY THE THIRD RESPONDENT TO THE PETITIONER.**
- EXT.P6** **TRUE COPY OF ACCOUNT SUBMITTED BY THE PETITIONER.**
- EXT.P7** **TRUE COPY OF FIXED DEPOSIT RECEIPT.**

RESPONDENT'S EXHIBITS

- EXT.R3(A)** **TRUE COPY OF PROCEEDINGS NO.TSP5-897/2003 DTD. 1-12-04 OF THE DIVISIONAL FOREST OFFICER, TIMBER SALES DIVISION, PALAKKAD**
- EXT.R3(B)** **TRUE COPY OF REQUISITION FOR RECOVERY OF REVENUE IN FORM NO.24 FOR RS. 1,94,861/-.**

/True Copy/

K.M.JOSEPH, J.

WP.(C) No.28341 OF 2003

Dated this the 20th day of December, 2006

JUDGMENT

Petitioner was the auction purchaser in respect of 18 lots of timber. Ext.P1 tender conditions provided for 60 days time for depositing the amount in clearing the goods. He could remove the timber by paying balance amount with 18% interest within a further period of 30 days. If the amount was not deposited within the said time also, the DFO could allow payment of balance amount with 24% interest and extend the time for a period of 30 days. If there was no removal within the extended period, the DFO could re-auction the timber after giving 15 days notice. Loss would be collected from the bidder, which includes interest, sur charge, ground rent and difference in amount, if re-auction fetches a lower amount. Petitioner could remove 4 lots within the grace period. Government however permitted extension for a period of two months. He removed three lots. Again Government vide Ext.P4 extended time till 31.3.1999. But petitioner could not remove 11 lots of timber in the extended time. Under Exts.P3

and P4 time for removal of timber was extended on condition that the petitioner pays 48% interest as penalty and two and a half per cent interest as surcharge. Petitioner challenges Ext.P5. By Ext.P5 petitioner has been called upon to pay an amount of Rs.2,12,861/- as loss occasioned. Learned counsel for the petitioner contended that there was no loss and a profit was made on re-auction being done. He would further contend that a perusal of Ext.P5 would show that the major portion of the demand therein is made up of a sum of Rs.1,87,847/- demanded towards 48% penal interest for a period of four months. He would impugn this as impermissible. According to him the rate of interest demanded is not as contemplated in the agreement.

2. Counter affidavit is filed. Therein, it is inter alia stated that petitioner removed 3 lots of timber by paying 48% interest and two and a half per cent as surcharge. It is stated that Government sustained loss of Rs.2,12,861/- towards sale value, FDT, ST, AST, Income Tax, advertisement charges etc. It is further stated that the amount of loss is calculated and fixed as per existing proforma prescribed by the Chief

Conservator of Forest (Protection), Trivandrum vide letter dated 11.11.1997 and as per the sale condition in Ext.P1.

3. In order to appreciate the contentions, it is necessary to refer the clause in question, namely 6(a). It provides as follows:

4. As far as the contention of the petitioner that Ext.P5 would show that there is no loss caused to the Government on the re-auction

being held, it may be true that the amount fetched in re-auction is not less than the amount for which the auction was knocked down in favour of the petitioner. But this will not advance the case of the petitioner against Ext.P5, for, the difference in the amounts, if the amount realised in the re-auction is less than the amount in the first auction, is only one of the elements that constitute the loss as contemplated in Clause 6A.

5. The further question that arises is as regards the demand for 48% penal interest. According to Sri. M.C.Sen, learned Senior Counsel, what is contemplated in the agreement is only realisation of 18% interest for the first month of extension and another rate of 24% when the second extension is sought. Demand for 48% interest is not stipulated in the agreement, he contends.

6. Smt. Suseela Bhat, learned Special Government Pleader on the other hand would contend that the petitioner was granted extension by the Government at the request of the petitioner beyond the period of four months contemplated in the agreement. He agreed to pay 48% interest. This was an act of volition as could be seen from the fact that

the petitioner removed three lots paying interest at 48% and two and a half per cent as sur charge. In such circumstances, it is submitted that the demand is perfectly legal and it is not open to the petitioner to challenge the same.

7. Auction was conducted on 2.7.1998. As per the terms of Clause 6(a) the petitioner had 60 days from Ext.P2, namely, 16.8.1998 to remove the goods on payment. That period expired on 15.10.1998. Thereafter he was entitled to remove on payment of 18% interest for a further period of one month, which also expired on 15.11.1998. The last period of extension contemplated with 24% interest also expired on 15.12.1998. Petitioner was granted extension for a period of two months from the expiry of the period upon payment of 48% and two and a half per cent surcharge . Likewise Ext.P4 dated 26.2.1999 evidences further extension till 31.3.1999. Last two extensions are apparently beyond the period of extension contemplated in the agreement.

I am of the view that there is no merit in the contention of the petitioner. It is true that what is contemplated in the agreement is 18%

interest and 24% interest for extension for the 3rd and 4th month respectively. Interest is part of the loss under Clause 6A. The petitioner has accepted the imposition of 48% interest. No doubt, it is not one provided as such in Ext.P1. Government could have held a re-auction. Instead, accepting the request of the petitioner, Government granted further time beyond the period contemplated in the agreement, but on imposition of 48% interest. Not only was this accepted by the petitioner, but he admittedly removed three lots. But he was unable to remove 11 lots. I feel that he should not be permitted to turn around and then challenge the calculation of the loss at 48% for the period in question, for, that was the agreed rate. Therefore, I find that the demand made in Ext.P5 may not be open to challenge under Article 226 of the Constitution of India and the writ petition is dismissed.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

W.A. No. OF

JUDGMENT

Dated this the day of February, 2006.